

REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested.

The outstanding Office Action refers to an Information Disclosure Statement filed on 3-08-02 as not being considered. However, with the Office Action of May 4, 2005 a form PTO-1449 was returned acknowledging consideration of that IDS. It is believed proper to have considered the IDS, so no other issues are believed to be outstanding with respect to that matter.

Claims 1, 3, 4, and 6-50 are pending in this application. Claims 6-46 stand withdrawn from consideration as directed to a non-elected invention. Claim 1 is amended and claim 5 is canceled by the present response. Features from canceled claim 5 are now included in amended independent claim 1.

Claims 1, 3-5, and 47-50 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. patent 6,587,837 to Spagna et al. (herein "Spagna") in view of U.S. patent 5,892,900 to Ginter et al. (herein "Ginter").

Addressing the above-noted rejection, that rejection is traversed by the present response.

As noted above independent claim 1 is amended by the present response to clarify features recited therein. Independent claim 1 and claims 2, 4, and 47-50 dependent therefrom are believed to be allowable.

According to independent claim 1, the claimed music distribution method includes an operation of "receiving appreciation records through said communication medium by said server, at regular intervals, the appreciation records including a number of times of reproduction with attribution of said music information recorded by said music reproduction apparatus". Applicants submit such features distinguish over the applied art.

With respect to the above-noted features the outstanding Office Action cites Spagna at column 4, lines 26-32, column 13, lines 31-37, and column 23, lines 50-52. In reply applicants submit such disclosures in Spagna do not correspond to the claimed features as currently written.

Spagna is directed to a method for permitting electronic delivery of digital content that may be distributed electronically via a web interface and that includes content such as print media, films, games, programs, television, multimedia, and music.¹ In Spagna an electronic store may need to create licenses for the permitted use of a copyrighted digital content that match usage conditions. For example the license may grant permission to make a limited number of copies of the digital content.² In Spagna a digital content electronic distribution system 100 assists with: metadata extraction, secondary usage conditions, SC packaging, and tracking of electronic content transactions. The secondary usage conditions data can include retail business offers such as content 113 purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions.³ In Spagna the content usage control layer 505 permits the specification and enforcement of the conditions or restrictions imposed on the use of content 113 at the end-user devices 109. The conditions may specify the number of plays allowed for the content 113.⁴

From the above descriptions in Spagna, applicants submit it is clear that Spagna is directed to a system in which secondary usage conditions data can include retail business offers such as content 113 purchase price, pay-per-listen price, copy authorization and target device types, or time-availability restrictions and the number of plays as specified by conditions, etc., to allow playing within the specified number of plays. Therefore, in that respect Spagna does not disclose or suggest that appreciation *records are received through a*

¹ Spagna at the Abstract.

² Spagna at column 4, lines 26-30.

³ Spagna at column 13, lines 31-37.

⁴ Spagna at column 23, lines 48-52.

communication medium by a server at regular intervals. Thus, Spagna does not disclose the now recited claim features of “receiving appreciation records through said communication medium by said server, at regular intervals, the appreciation records including a number of times of reproduction with attribution of said music information reproduced by said music reproduction apparatus”. Thus, for such reasons the claims as currently written are believed to distinguish over the applied art.

Independent claim 1 additionally recites:

distributing a payment to a copyright holder who holds a copyright of said music information, in accordance with the number of times of reproduction, the payment being drawn from the membership fee paid by the listener.

The outstanding Office Action recognizes that Spagna does not disclose the above feature, and to cure that recognized deficiency in Spagna the outstanding Office Action cites Ginter, particularly citing Ginter at column 20, lines 23-43, column 24, lines 24-53, column 135, lines 44-52, column 140, lines 25-43, column 38, lines 1-24, and column 312, lines 28-32.

In reply applicants note Ginter is directed to a system and method for secure transaction management and electronic rights protection. Ginter indicates a certain content provider might, for example, require metering the number of copies made for distribution to employees of a given software program.⁵ The same provider might also charge fees based on the total number of different properties licensed from them by the user and a metering history of their licensing of properties might be required to maintain this information.⁶ The content provider may further choose to charge only once for access to a portion of a property, regardless of the number of times that portion of the property is accessed by a user.⁷ One object 300 may come with relatively simply methods, such as allowing unlimited viewing

⁵ Ginter at column 20, lines 33-35.

⁶ Ginter at column 20, lines 39-43.

⁷ Ginter at column 20, lines 49-53.

within a fixed period of time for a fixed fee.⁸ A certain flat rate fee may also apply to opening the periodical regardless of the number of articles opened.⁹

However, from the above descriptions in Ginter applicants respectfully submit it is clear that Ginter does not disclose or suggest that a payment according to a number of times of reproduction is distributed to a copyright holder who holds a copyright of music information. No disclosure in Ginter is directed to such a feature.

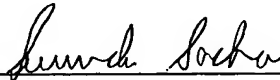
In such ways, Ginter does not cure the recognized deficiencies of Spagna with respect to the claims as currently written.

In view of these foregoing comments, applicants respectfully submit the claims as currently written distinguish over the combination of teachings of Spagna in view of Ginter.

As no other issues are pending in this application, it is respectfully submitted that the present application is now in condition for allowance, and it is hereby respectfully requested that this case be passed to issue.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters
Registration No. 28,870
Surinder Sachar
Registration No. 34,423
Attorneys of Record

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 03/06)

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⁸ Ginter at column 135, lines 44-46.

⁹ Ginter at column 312, lines 28-29.